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**An Act To Implement the Updates to Article 7 of the
Uniform Commercial Code Suggested by the National
Conference of Commissioners on Uniform State Laws**

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 11 MRSA art. 7, as amended, is repealed.

Sec. A-2. 11 MRSA art. 7-A is enacted to read:

ARTICLE 7-A

DOCUMENTS OF TITLE

Sec. A-3. Legislative intent. This Act is the Maine enactment of the Uniform Commercial Code, Article 7 as revised by the National Conference of Commissioners on Uniform State Laws. The text of the uniform act has been changed to conform to Maine statutory conventions, and the article is enacted as Article 7-A. The changes are technical in nature and it is the intent of the Legislature that this Act be interpreted as substantively the same as the revised Article 7 of the uniform act.

Sec. A-4. Effective date. This Part takes effect January 1, 2010.

PART B

Sec. B-1. 10 MRSA §9416, sub-§1, ¶A, as enacted by PL 1999, c. 762, §2, is amended to read:

A. Would be a note under Title 11, Article 3-A or a document under Title 11, Article ~~77~~7-A if the electronic record were in writing; and

Sec. B-2. 10 MRSA §9416, sub-§4, as enacted by PL 1999, c. 762, §2, is amended to read:

4. Holders. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Title 11, section 1-201, subsection (20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Title 11, section 3-1302, subsection (1); Title 11, section ~~7-5047-1501~~; or Title 11, section 9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

Sec. B-3. 11 MRSA §2-103, sub-§(3), as amended by PL 1999, c. 699, Pt. B, §5 and affected by §28, is further amended to read:

(3). The following definitions in other Articles apply to this Article:

"Check."	Section 3-104.
"Consignee."	Section 7-1027 -1102.
"Consignor."	Section 7-1027 -1102.
"Consumer goods."	Section 9-1102.
"Dishonor."	Section 3-1502.
"Draft."	Section 3-104.

Sec. B-4. 11 MRSA §2-103, sub-§(3-A) is enacted to read:

(3-A). "Control" as provided in section 7-1106 and the following definitions in other Articles apply to this Article:

<u>"Check."</u>	<u>Section 3-104.</u>
<u>"Consignee."</u>	<u>Section 7-1102.</u>
<u>"Consignor."</u>	<u>Section 7-1102.</u>
<u>"Consumer goods."</u>	<u>Section 9-1102.</u>
<u>"Dishonor."</u>	<u>Section 3-502.</u>
<u>"Draft."</u>	<u>Section 3-104.</u>

Sec. B-5. 11 MRSA §2-104, sub-§(2) is amended to read:

(2). **Financing agency.** "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

Sec. B-6. 11 MRSA §2-310, sub-§(3) is repealed and the following enacted in its place:

(3). If delivery is authorized and made by way of documents of title otherwise than by subsection (2), then payment is due regardless of where the goods are to be received:

- (a). At the time and place at which the buyer is to receive delivery of the tangible documents; or
- (b). At the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none the seller's residence; and

Sec. B-7. 11 MRSA §2-323, sub-§(2) is amended to read:

(2). Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a). Due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (section 2-508, subsection (1)); and

(b). Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payments upon furnishing an indemnity which the buyer in good faith deems adequate.

Sec. B-8. 11 MRSA §2-401, sub-§(3) is amended to read:

(3). Unless otherwise explicitly agreed where delivery is to be made without moving the goods

(a). If the seller is to deliver a tangible document of title, title passes at the time when and the place where ~~he~~the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b). If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

Sec. B-9. 11 MRSA §2-403, sub-§(4), as amended by PL 1991, c. 636, §2, is further amended to read:

(4). The rights of other purchasers of goods and of lien creditors are governed by the Articles on secured transactions (Article 99-A) and documents of title (Article 77-A).

Sec. B-10. 11 MRSA §2-503, sub-§(4), ¶(b) is amended to read:

(b). Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record~~ directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9-A receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

Sec. B-11. 11 MRSA §2-503, sub-§(5) is amended to read:

(5). Where the contract requires the seller to deliver documents,

(a). ~~He~~The seller must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (section 2-323, subsection (2)); and

(b). Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Sec. B-12. 11 MRSA §2-505, sub-§(1), ¶(b) is amended to read:

(b). A nonnegotiable bill of lading to ~~himself~~the seller or ~~his~~the seller's nominee reserves possession of the goods as security, but except in a case of conditional delivery under section 2-507, subsection (2) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

Sec. B-13. 11 MRSA §2-505, sub-§(2) is amended to read:

(2). When shipment by the seller with reservation of a security interest is in violation of the contract for sale, it constitutes an improper contract for transportation within section 2-504 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Sec. B-14. 11 MRSA §2-506, sub-§(2) is amended to read:

(2). The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face~~.

Sec. B-15. 11 MRSA §2-509, sub-§(2), ¶(a) is amended to read:

(a). On ~~his~~the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

Sec. B-16. 11 MRSA §2-509, sub-§(2), ¶(c) is amended to read:

(c). After ~~his~~the buyer's receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in section 2-503, subsection (4), paragraph (b).

Sec. B-17. 11 MRSA §2-605, sub-§(2) is amended to read:

(2). Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~in the documents.

Sec. B-18. 11 MRSA §2-705, sub-§(3), ¶(c) is amended to read:

(c). If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

Sec. B-19. 11 MRSA §2-1103, sub-§(1), ¶(a), as enacted by PL 1991, c. 805, §4, is amended to read:

(a). "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. Buying may be for cash or by exchange of

other property or on secured or unsecured credit and includes ~~receiving~~acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Sec. B-20. 11 MRSA §2-1103, sub-§(1), ¶(o), as enacted by PL 1991, c. 805, §4, is amended to read:

(o). "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Sec. B-21. 11 MRSA §2-1514, sub-§(2), as enacted by PL 1991, c. 805, §4, is amended to read:

(2). A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~in the documents.

Sec. B-22. 11 MRSA §2-1526, sub-§(2), ¶(c), as enacted by PL 1991, c. 805, §4, is amended to read:

(c). Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse ~~operator~~.

Sec. B-23. 11 MRSA §4-104, sub-§(3), as amended by PL 2003, c. 594, §9, is further amended to read:

(3). The "Control" as provided in section 7-1106 and the following definitions in other Articles apply to this Article:

"Acceptance."	Section 3-1409.
"Alteration."	Section 3-1407.
"Cashier's check."	Section 3-1104.
"Certificate of deposit."	Section 3-1104.
"Certified Check."	Section 3-1409.
"Check."	Section 3-1104.
"Demand draft."	Section 3-1104.
"Draft."	Section 3-1104.
"Good faith."	Section 3-1103.
"Holder in due course."	Section 3-1102.
"Instrument."	Section 3-1104.
"Notice of dishonor."	Section 3-1503.
"Order."	Section 3-1103.
"Ordinary care."	Section 3-1103.
"Person entitled to enforce."	Section 3-1301.
"Presentment."	Section 3-1501.
"Promise."	Section 3-1103.
"Prove."	Section 3-1103.

"Teller's check."

Section 3-1104.

"Unauthorized signature."

Section 3-1403.

Sec. B-24. 11 MRSA §4-208, sub-§(3), as amended by PL 1999, c. 699, Pt. B, §17 and affected by §28, is further amended to read:

(3). Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 99-A, but:

(a). No security agreement is necessary to make the security interest enforceable (section 9-1203, subsection (2), paragraph (c), subparagraph (i)); ~~and~~

(b). No filing is required to perfect the security interest; and

(c). The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

Sec. B-25. 11 MRSA §5-1110, sub-§(2), as enacted by PL 1997, c. 429, Pt. A, §2 and affected by §4, is amended to read:

(2). The warranties in subsection (1) are in addition to warranties arising under Articles 3-A, 4, ~~77-A~~ and 8-A because of the presentation or transfer of documents covered by any of those Articles.

Sec. B-26. 11 MRSA §8-1103, sub-§(7) is enacted to read:

(7). A document of title is not a financial asset unless section 8-1102, subsection (1), paragraph (i), subparagraph (iii) applies.

Sec. B-27. 11 MRSA §9-1102, sub-§(30), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(30). "Document" means a document of title or a receipt of the type described in section ~~7-201~~7-1201, subsection (2).

Sec. B-28. 11 MRSA §9-1102, sub-§(80), ¶(d), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(d). Transmitting or producing and transmitting electricity, steam, gas or water.

The "Control" as provided in section 7-1106 and the following definitions in other Articles apply to this Article:

"Applicant"

Section 5-1102.

"Beneficiary"

Section 5-1102.

"Broker"

Section 8-1102.

"Certificated security"

Section 8-1102.

SP0508, LD 1405, item 1, 124th Maine State Legislature
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"Check"	Section 3-1104.
"Clearing corporation"	Section 8-1102.
"Contract for sale"	Section 2-106.
"Customer"	Section 4-104.
"Entitlement holder"	Section 8-1102.
"Financial asset"	Section 8-1102.
"Holder in due course"	Section 3-1302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5-1102.
"Issuer" (with respect to a security)	Section 8-1201.
<u>"Issuer" (with respect to documents of title)</u>	<u>Section 7-1102.</u>
"Lease"	Section 2-1103.
"Lease agreement"	Section 2-1103.
"Lease contract"	Section 2-1103.
"Leasehold interest"	Section 2-1103.
"Lessee in ordinary course of business"	Section 2-1103.
"Lessor"	Section 2-1103.
"Lessor's residual interest"	Section 2-1103.
"Letter of credit"	Section 5-1102.
"Merchant"	Section 2-104.
"Negotiable instrument"	Section 3-1104.
"Nominated person"	Section 5-1102.
"Note"	Section 3-1104.
"Proceeds of a letter of credit"	Section 5-114.
"Prove"	Section 3-1103.
"Sale"	Section 2-106.
"Securities account"	Section 8-1501.
"Securities intermediary"	Section 8-1102.
"Security"	Section 8-1102.
"Security certificate"	Section 8-1102.
"Security entitlement"	Section 8-1102.
"Uncertificated security"	Section 8-1102.

Sec. B-29. 11 MRSA §9-1203, sub-§(2), ¶(c), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(c). One of the following conditions is met:

- (i) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
- (ii) The collateral is not a certificated security and is in the possession of the secured party under section 9-1313 pursuant to the debtor's security agreement;
- (iii) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-1302 pursuant to the debtor's security agreement; or

(iv) The collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter-of-credit rights or electronic documents, and the secured party has control under sections 9-1104, 9-1105, 9-1106 or 9-1107 pursuant to the debtor's security agreement.

Sec. B-30. 11 MRSA §9-1207, sub-§(3), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(3). Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under section 7-1106, 9-1104, 9-1105, 9-1106 or 9-1107:

- (a). May hold as additional security any proceeds, except money or funds, received from the collateral;
- (b). Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (c). May create a security interest in the collateral.

Sec. B-31. 11 MRSA §9-1208, sub-§(2), ¶(d), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(d). A secured party having control of investment property under section 8-1106, subsection (4), paragraph (b) or 9-1106, subsection (2) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

Sec. B-32. 11 MRSA §9-1208, sub-§(2), ¶(e), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(e). A secured party having control of a letter-of-credit right under section 9-1107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

Sec. B-33. 11 MRSA §9-1208, sub-§(2), ¶(f) is enacted to read:

(f). A secured party having control of an electronic document shall:

(1) Give control of the electronic document to the debtor or its designated custodian;

(2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party.

Sec. B-34. 11 MRSA §9-1301, sub-§(3), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(3). Except as otherwise provided in subsection (4), while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

- (a). Perfection of a security interest in the goods by filing a fixture filing;
- (b). Perfection of a security interest in timber to be cut; and
- (c). The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

Sec. B-35. 11 MRSA §9-1310, sub-§(2), ¶(e), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(e). In certificated securities, documents, goods or instruments that is perfected without filing, control or possession under section 9-1312, subsection (5), (6) or (7);

Sec. B-36. 11 MRSA §9-1310, sub-§(2), ¶(h), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(h). In deposit accounts, electronic chattel paper, electronic documents, investment property or letter-of-credit rights that is perfected by control under section 9-1314;

Sec. B-37. 11 MRSA §9-1312, sub-§(5), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(5). A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

Sec. B-38. 11 MRSA §9-1313, sub-§(1), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(1). Except as otherwise provided in subsection (2), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-1301.

Sec. B-39. 11 MRSA §9-1314, sub-§(1), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(1). A security interest in investment property, deposit accounts, letter-of-credit rights ~~or~~, electronic chattel paper or electronic documents may be perfected by control of the collateral under section 7-1106, 9-1104, 9-1105, 9-1106 or 9-1107.

Sec. B-40. 11 MRSA §9-1314, sub-§(2), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(2). A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights or electronic documents is perfected by control under section 7-1106, 9-1104, 9-1105 or 9-1107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

Sec. B-41. 11 MRSA §9-1317, sub-§(2), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(2). Except as otherwise provided in subsection (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

Sec. B-42. 11 MRSA §9-1317, sub-§(4), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(4). A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

Sec. B-43. 11 MRSA §9-1338, sub-§(2), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(2). A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments or a security certificate, receives delivery of the collateral.

Sec. B-44. 11 MRSA §9-1601, sub-§(2), as enacted by PL 1999, c. 699, Pt. A, §2 and affected by §4, is amended to read:

(2). A secured party in possession of collateral or control of collateral under section 7-1106, 9-1104, 9-1105, 9-1106 or 9-1107 has the rights and duties provided in section 9-1207.

Sec. B-45. 17 MRSA §1663 is amended to read:

§ 1663. Issue of duplicate bills not so marked

Any officer, agent or servant of a carrier who, with intent to defraud, issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of Title 11, section 7-4027-1402, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, ~~shall be~~ is guilty of a crime, and upon conviction ~~shall~~ must be punished for each offense by a fine of not more than \$5,000 or by imprisonment for not more than 5 years, or by both.

Sec. B-46. 17 MRSA §1703 is amended to read:

§ 1703. Issue of duplicate receipts not so marked

A ~~warehouseman~~ warehouse, or any officer's agent, or servant of a ~~warehouseman~~ warehouse, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate", except in the case of a lost or destroyed receipt after proceedings as provided for in Title 11, section 7-4027-1402, ~~shall be~~ is guilty of a crime, and upon conviction ~~shall~~ must be punished for each offense by a fine of not more than \$5,000 or by imprisonment for not more than 5 years, or by both.

Sec. B-47. 17 MRSA §1705 is amended to read:

§ 1705. Delivery of goods without obtaining negotiable receipt

A ~~warehouseman~~ warehouse, or any officer, agent or servant of a ~~warehouseman~~ warehouse who delivers goods out of the possession of such ~~warehouseman~~ warehouse, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, ~~shall~~, except in the cases provided for in Title 11, sections 7-4027-1402 and 7-4037-1403, ~~be found~~ is guilty of a crime, and upon conviction ~~shall~~ must be punished for each offense by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

Sec. B-48. Effective date. This Part takes effect January 1, 2010.

SUMMARY

This bill replaces Article 7 of the Uniform Commercial Code with the 2003 version of the Article as approved by the National Conference of Commissioners on Uniform State Laws. Explanatory notes and Uniform Comments as prepared by the uniform law commissioners are included.